IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.306 OF 2004

Dattatray Apaji Rawool. ...Petitioner.
Vs.
State of Maharashtra & Ors. ...Respondents.
....
Mr. J. G. Sabnis for the Petitioner.
Mr. R.D. Rane, GP for the Respondent.
.....

CORAM : KSHITIJ R. VYAS, C.J. &
DR.D.Y.CHANDRACHUD, J.

April 4, 2006.

P.C. (Per Dr. D.Y. Chandrachud, J.):

Rule, by consent returnable forthwith. Counsel appearing on behalf of the Respondents waives service. By consent of Counsel and at their request taken up for hearing.

2. By these proceedings under Article 226 of the Constitution, the Petitioner inter alia challenges an order dated 15th June 2001, by which he was transferred from his position as a Primary Teacher in the Primary School at Lore, Taluka Vaibhavwadi to Vengurla. Both the Petitioner and his wife are

Primary Teachers and the Petitioner's wife is also working in the same school at Lore. Her services were also transferred from Lore to Vengurla.

3. In the reply, it has been stated that the Petitioner served with the same school for nearly eighteen years. The Petitioner had a serious quarrel with one of his colleagues who is a Primary Teacher working in the same school. The dispute assumed serious dimensions in the local community and in fact, the Petitioner's mother made a complaint to the Home Minister stating that the life of the Petitioner was in danger. The complaint was enquired into by the Police Inspector at Vaibhavwadi Police Station and the Petitioner was transferred in view of the Police report that his life was in danger. However, on a representation moved on behalf of the Petitioner and his wife, the transfer of the Petitioner's wife was cancelled in view of the fact that their children were undergoing education at Lore. In the reply, it has been stated that the Petitioner has not joined at the place of transfer since 2nd July 2001 until date.

4. In the course of one of the representations dated 2nd May

1998 submitted by the Petitioner, he has stated that he was ill and had been treated at the Tata Hospital. Counsel appearing on behalf of the Petitioner stated that the Petitioner was treated for cancer at the Tata Memorial Hospital and that though he is now fit for work, he had not been able to resume duties earlier because of his ailment. In the affidavit in reply filed on behalf of the Respondents, it has been stated that the Petitioner has not joined services on the pretext of an illness and it has been submitted that the reason is false.

5. During the course of the hearing of these proceedings, the Learned Government Pleader had taken time to seek instructions in the matter. Thereupon a practical way out to resolve the impasse has been suggested. A communication to that effect dated 2nd April 2006 of the Education Officer (Primary), Zilla Parishad, Sindhudurg, has been placed on the record in which it has been stated thus :

> "(1) Mr. D.A. Rawool, the Petitioner may apply for extra ordinary leave with the Certificate of illness and request the authority as per the relevant G.R. dated 18th May 1995.

> -(2) Being absent for more than four years the request application will have to be sent to the Govt. of Maharashtra through the Divisional Commissioner for sanction of extra ordinary leave.
>
> -(3) After getting sanction for the extra ordinary leave for the absentee period, the request is to be made for the pensionary/monetary benefits for the service rendered prior to his remaining absent."

6. The Petitioner has not reported for work since 2nd July 2001. The submission made on behalf of the Respondents is that even though the Petitioner has now stated that he was undergoing treatment for cancer, it was necessary for him to inform the Zilla Parishad and to produce a medical certificate together with an application for sanction of medical leave. Unfortunately, the Petitioner has remained absent continuously. Having regard to the long years of service rendered by the Petitioner, and if the Petitioner has been suffering from cancer, the case would warrant fair and sympathetic treatment by the State Government and its officers. At this stage, in our view, the ends of justice would be met if the course which has been suggested by the Learned Government Pleader, on the instructions of the Education Officer (Primary), Zilla Parishad, Sindhudurg, is adopted. The Petitioner is agreeable to do so and it has been stated on his behalf by

Counsel that the Petitioner is willing to apply for extra ordinary leave together with all the requisite medical certificates and that the Petitioner would also submit an application for voluntary retirement.

7. The petition is accordingly disposed of in the light of the following directions :

-(i) The Petitioner shall be at liberty, within a period of two weeks from today, to apply to the Education Officer (Primary), Zilla Parishad, Sindhudurg, for extra ordinary leave in accordance with the GR dated 18th May 1995. The application by the Petitioner shall be accompanied by medical certificates and copies of the relevant medical records for establishing that the Petitioner was undergoing medical treatment as stated earlier;

-(ii) The Education Officer (Primary), Zilla Parishad, Sindhudurg, shall, within a period of two weeks of the receipt of the application, forward the same to the Divisional Commissioner for sanction of extra ordinary leave. The Divisional Commissioner shall, in turn, forward the same, within one week thereafter, to the

State Government. In the event that the medical records do establish that the Petitioner has received treatment for cancer as stated before the Court, we are of the view that the request of the Petitioner for extra ordinary leave should be considered sympathetically and sanctioned in accordance with law;

-(iii) Simultaneously with the application for the grant of extra ordinary leave, the Petitioner would be at liberty to submit an application for voluntary retirement. In the event that the Petitioner is granted extra ordinary leave, it would be open to the competent authority to consider the application for voluntary retirement in accordance with law. In the event that the medical records that are produced before the State Government show that the Petitioner was undergoing treatment for cancer, we hope and trust that the case of the Petitioner would be considered sympathetically and a decision on the application for voluntary retirement is taken fairly. We direct that a decision on the application for voluntary retirement shall be arrived at within a period of three months from the decision on the application for the grant of extra ordinary leave.

8. The petition is accordingly disposed of. There shall be no

order as to costs.

CHIEF JUSTICE

Dr.D. Y. Chandrachud, J.